



## Senate

General Assembly

February Session, 2008

**File No. 522**

Senate Bill No. 694

*Senate, April 7, 2008*

The Committee on Judiciary reported through SEN. MCDONALD of the 27th Dist., Chairperson of the Committee on the part of the Senate, that the bill ought to pass.

### ***AN ACT CONCERNING ERASURE OF CRIMINAL RECORDS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 54-142a of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective October 1, 2008*):

3 (a) Whenever in any criminal case, on or after October 1, 1969, the  
4 accused, by a final judgment, is found not guilty of the charge or the  
5 charge is dismissed, all police and court records and records of any  
6 state's attorney pertaining to such charge shall be erased upon the  
7 expiration of the time to file a writ of error or take an appeal, if an  
8 appeal is not taken, or upon final determination of the appeal  
9 sustaining a finding of not guilty or a dismissal, if an appeal is taken.  
10 Nothing in this subsection shall require the erasure of any record  
11 pertaining to a charge for which the defendant was found not guilty by  
12 reason of mental disease or defect or guilty but not criminally  
13 responsible by reason of mental disease or defect.

14 (b) Whenever in any criminal case prior to October 1, 1969, the

15 accused, by a final judgment, was found not guilty of the charge or the  
16 charge was dismissed, all police and court records and records of the  
17 state's or prosecuting attorney or the prosecuting grand juror  
18 pertaining to such charge shall be erased by operation of law and the  
19 clerk or any person charged with the retention and control of such  
20 records shall not disclose to anyone their existence or any information  
21 pertaining to any charge so erased; provided nothing in this subsection  
22 shall prohibit the arrested person or any one of his heirs from filing a  
23 petition for erasure with the court granting such not guilty judgment  
24 or dismissal, or, where the matter had been before a municipal court, a  
25 trial justice, the Circuit Court or the Court of Common Pleas with the  
26 records center of the Judicial Department and thereupon all police and  
27 court records and records of the state's attorney, prosecuting attorney  
28 or prosecuting grand juror pertaining to such charge shall be erased.  
29 Nothing in this subsection shall require the erasure of any record  
30 pertaining to a charge for which the defendant was found not guilty by  
31 reason of mental disease or defect.

32 (c) (1) Whenever any charge in a criminal case has been nolle in the  
33 Superior Court, or in the Court of Common Pleas, if at least thirteen  
34 months have elapsed since such nolle, all police and court records and  
35 records of the state's or prosecuting attorney or the prosecuting grand  
36 juror pertaining to such charge shall be erased, [ . However,] except  
37 that in cases of nolle entered in the Superior Court, Court of Common  
38 Pleas, Circuit Court, municipal court or by a justice of the peace prior  
39 to April 1, 1972, such records shall be deemed erased by operation of  
40 law and the clerk or the person charged with the retention and control  
41 of such records shall not disclose to anyone their existence or any  
42 information pertaining to any charge so erased, provided nothing in  
43 this subsection shall prohibit the arrested person or any one of his  
44 heirs from filing a petition to the court or to the records center of the  
45 Judicial Department, as the case may be, to have such records erased,  
46 in which case such records shall be erased.

47 (2) Whenever any charge in a criminal case has been continued at  
48 the request of the prosecuting attorney, and a period of thirteen

49 months has elapsed since the granting of such continuance during  
50 which period there has been no prosecution or other disposition of the  
51 matter, the charge shall be construed to have been nolle as of the date  
52 of termination of such thirteen-month period and such erasure may  
53 thereafter be effected or a petition filed therefor, as the case may be, as  
54 provided in this subsection for nolle cases.

55 (d) (1) Whenever prior to October 1, 1974, any person who has been  
56 convicted of an offense in any court of this state has received an  
57 absolute pardon for such offense, such person or any one of his heirs  
58 may, at any time subsequent to such pardon, file a petition with the  
59 superior court at the location in which such conviction was effected, or  
60 with the superior court at the location having custody of the records of  
61 such conviction or with the records center of the Judicial Department if  
62 such conviction was in the Court of Common Pleas, Circuit Court,  
63 municipal court or by a trial justice court, for an order of erasure, and  
64 the Superior Court or records center of the Judicial Department shall  
65 direct all police and court records and records of the state's or  
66 prosecuting attorney pertaining to such case to be erased.

67 (2) Whenever such absolute pardon was received on or after  
68 October 1, 1974, such records shall be erased.

69 (e) (1) The clerk of the court or any person charged with retention  
70 and control of such records in the records center of the Judicial  
71 Department or any law enforcement agency having information  
72 contained in such erased records shall not disclose to anyone, except  
73 the subject of the record, upon submission pursuant to guidelines  
74 prescribed by the Office of the Chief Court Administrator of  
75 satisfactory proof of the subject's identity, information pertaining to  
76 any charge erased under any provision of this section and such clerk or  
77 person charged with the retention and control of such records shall  
78 forward a notice of such erasure to any law enforcement agency to  
79 which he knows information concerning the arrest has been  
80 disseminated and such disseminated information shall be erased from  
81 the records of such law enforcement agency. Such clerk or such person,

82 as the case may be, shall provide adequate security measures to  
83 safeguard against unauthorized access to or dissemination of such  
84 records or upon the request of the accused cause the actual physical  
85 destruction of such records, except that such clerk or such person shall  
86 not cause the actual physical destruction of such records until three  
87 years have elapsed from the date of the final disposition of the criminal  
88 case to which such records pertain.

89 (2) No fee shall be charged in any court with respect to any petition  
90 under this section.

91 (3) Any person who shall have been the subject of such an erasure  
92 shall be deemed to have never been arrested within the meaning of the  
93 general statutes with respect to the proceedings so erased and may so  
94 swear under oath.

95 (f) Upon motion properly brought, the court or a judge thereof, if  
96 such court is not in session, may order disclosure of such records (1) to  
97 a defendant in an action for false arrest arising out of the proceedings  
98 so erased, or (2) to the prosecuting attorney and defense counsel in  
99 connection with any perjury charges which the prosecutor alleges may  
100 have arisen from the testimony elicited during the trial. Such  
101 disclosure of such records is subject also to any records destruction  
102 program pursuant to which the records may have been destroyed. The  
103 jury charge in connection with erased offenses may be ordered by the  
104 judge for use by the judiciary, provided the names of the accused and  
105 the witnesses are omitted therefrom.

106 (g) The provisions of this section shall not apply to any police or  
107 court records or the records of any state's attorney or prosecuting  
108 attorney with respect to any information or indictment containing  
109 more than one count [(1)] while the criminal case is pending, [, or (2)  
110 when the criminal case is disposed unless and until all counts are  
111 entitled to erasure in accordance with the provisions of this section.]  
112 Nothing in this section shall require the erasure of any information  
113 contained in the registry of protective orders established pursuant to  
114 section 51-5c.

115       (h) For the purposes of this section, "court records" shall not include  
116       a record or transcript of the proceedings made or prepared by an  
117       official court reporter, assistant court reporter or monitor.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2008</i>	54-142a

**JUD**       *Joint Favorable*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

### **OFA Fiscal Note**

#### **State Impact:**

Agency Affected	Fund-Effect	FY 09 \$	FY 10 \$
Various State Agencies	GF - Cost	Greater than 500,000	Significant

Note: GF=General Fund

#### **Municipal Impact:**

Municipalities	Effect	FY 09 \$	FY 10 \$
Various Municipal Police Departments	STATE MANDATE - Cost	Potential	Potential

### **Explanation**

The bill expands criminal records that must be erased. Specifically, it requires erasure of individual charges that have been dropped (nolled) but appear on a multi-count charging document along with one or more charges that resulted in conviction. It is estimated that tens of thousands of digital and paper records would need to be erased each year under the bill.

The state would incur a significant, one-time cost estimated to be greater than \$500,000 to modify certain information technology systems (e.g., Offender-Based Tracking System; Criminal Motor Vehicle System) to accommodate the bill's change. Additional staffing would be needed to erase the paper records of the Judicial Department and Division of Criminal Justice. The associated cost for salaries, expenses, and fringe benefits would be significant. These personnel costs would be greater in the near term if the bill's provisions apply retroactively to dockets initiated prior to the effective date of 10/1/08.

The Department of Public Safety (DPS) Division of State Police would be able to accommodate the in-house reprogramming of the

DPS records retention program with existing staff at no additional cost.

A potential cost exists to various municipal police departments that may require additional Records Office staff assistance in order to comply with the bill.

***The Out Years***

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

**OLR Bill Analysis****SB 694****AN ACT CONCERNING ERASURE OF CRIMINAL RECORDS.****SUMMARY:**

By law, courts, police, and prosecutors must erase the records of any criminal defendant whenever (1) he or she, by a final judgment, is found not guilty of the charge or the charge is dismissed; (2) any charge in his or her criminal case has been nolle and at least 13 months have elapsed since the nolle; or (3) he or she received an absolute pardon. However, the requirement does not apply to cases where defendants have multiple charges (counts) in a single information or indictment (charging document).

This bill eliminates the multi-count charging document exception. This means, for example, if a defendant is charged in a single charging document with three different crimes and is convicted of one but the other two are nolle, courts, police, and prosecutors must erase the two nolle charges.

EFFECTIVE DATE: October 1, 2008

**BACKGROUND*****Nolle***

A nolle is a formal statement by the prosecuting attorney that he or she will not prosecute a case further.

**COMMITTEE ACTION**

Judiciary Committee

Joint Favorable

Yea 35 Nay 8 (03/24/2008)